

UNITED STATES DISTRICT COURT

for the

Western District of North Carolina

Asheville Division

FILED
ASHEVILLE, N.C.

APR 15 2021

U.S. DISTRICT COURT
W. DIST. OF N.C.

Case No.

1:20-cv-00189-MR

(to be filled in by the Clerk's Office)

Jaion Evan McCLELLAN

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

WESLEY E. WARD

-v- SAINT I. TAPP

TONY L. BANKS

JACOB HICKS

TODD SCHETTER

CAPT. RILES (Capt. Riles)

CALEB DAYS

LT. MCMAHAN (Lt. McMAHAN)

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

THIRD AMENDED
COMPLAINT FOR VIOLATION OF CIVIL RIGHTS
(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name Isian Evans McClellan
 All other names by which
 you have been known: N/A
 ID Number OPUS# 0512345
 Current Institution Marion Correctional Inst. (#3730)
 Address 355 Old Glenwood Road
Marion N.C. 28752
City State Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name Toni L. Banks
 Job or Title (*if known*) Lieutenant, Investigating Officer
 Shield Number UNKNOWN
 Employer Department of Public Safety
 Address 355 Old Glenwood Road
Marion N.C. 28752
City State Zip Code
☒ Individual capacity ☐ Official capacity

Defendant No. 2

Name Todd Scheffer
 Job or Title (*if known*) Correctional Officer
 Shield Number 31R42
 Employer Department of Public Safety
 Address 355 Old Glenwood Road
Marion N.C. 28752
City State Zip Code
☒ Individual capacity ☐ Official capacity

Defendant No. 5

Name Saint I. Iapp

Job or title (if known) Correctional Sergeant

Shield Number unknown

Employer Department of Public Safety

Address 355 old Glenwood Road

Marion N.C. 28752
city state zip code

☒ individual capacity ☐ official capacity

Defendant No. 8

Name I. McMAHAN

Job or title (if known) Lieutenant in Rank

Shield Number unknown

Employer Department of Public Safety

Address 355 old Glenwood

Marion N.C. 28752
city state zip code

☒ individual capacity ☒ official capacity

Defendant No. 6

Name Jacob A. Hicks

Job or title (if known) Correctional Sergeant

Shield Number HSA86

Employer Department of public safety

Address 355 old Glenwood Road

Marion N.C. 28752
city state zip code

☒ individual capacity ☒ official capacity

Defendant No. 7

Name R. Riles

Job or title (if known) Captain in Rank

Shield Number unknown

Employer Department of Public safety

Address 355 old Glenwood Road

Marion N.C. 28752
city state zip code

☒ individual capacity ☒ official capacity

Defendant No. 3

Name

CALEB M. DAYS

Job or Title (if known)

correctional Officer.

Shield Number

DCM 26

Employer

Department of Public Safety

Address

355 old Glenwood Road

MARION

City

N.C.

State

28752

Zip Code



Individual capacity



Official capacity

Defendant No. 4

Name

Wesley E. WARD

Job or Title (if known)

Registered Nurse

Shield Number

WWE 14

Employer

Department of Public Safety

Address

355 old Glenwood Road

MARION

City

N.C.

State

28752

Zip Code



Individual capacity



Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

Federal officials (a *Bivens* claim)

State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

42 USC § 1983 Failure to protect from harm of another prisoner while or during my own incarceration !

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

N/A

(My answer to "Letter D., page 4 of 11")

/ stating of how each Defendant acted "under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the District of Columbia. Each Defendant acted under color of state or local Law, by each person being a state employee acting against me while on duty inside a state prison. All Defendants named below either contributed to how I was assaulted, investigated how I was assaulted, responded to the code 4 called upon me being assaulted or had a chance to sanction officers under their supervision for errors made on their behalf which led up to how failure to protect happened;

Lt. J. McMahon; officer in charge at the time failed to sanction staff and declare me as assault victim.

Todd Schetter; he called for another group of inmate's to be let out of their cell when I was

Not secured in my cell, And he pepper sprayed me in a incident that he triggered.

Caleb Davis; he was the officer at the controls in the control booth who pushed the button to release other prisoners from their cell (Namely Joshua Carter who assaulted me with a deadly weapon.) After receiving Ofc. Todd Schetter radio message to let other prisoners out of their cells while I was in the shower. He failed to look in the shower himself from booth.

Toni L. Banks; This Lieutenant literally investigated and done all incident reports stating the position of all persons involved, Lt. Banks told direct lies in her report as if policy was followed when Todd Schetter and Caleb Davis clearly didn't visually take a physical look before opening another group of inmate doors while I was in the shower. Aiding and assisting in a cover up.

Wesley E. Ward; The Nurse who seen me after I was assaulted by inmate Joshua Carter with a deadly weapon. Nurse Ward failed to document my shoulder injury in it's total form and only gave me first aid without sending me to outside medical. The results of such call made has resulted in injury never healing properly.

Saint J. Tapp; The person who gave response to my direct written grievance. Saint J. Tapp being the unit manager assistant who is ^{supervisor} ~~supervisor~~ of Ofc. Davis and Schetter.

Saint J. Tapp first step, grievance response to me. He clearly stated staff under his directive errored, but he failed to sanction Davis and Schetter which made this suite necessary.

Sacob Hicks; The person who handcuffed me after pulling me from the floor in incident where I was the victim, he responded as an eye witness, used force of handcuffs on me aggressively.

Cpt. R. Riles; shift leader of institution, superior of all officers involved at the time failed to

N/A

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

See attachment page titled; My answer to letter D., Page 4 of 11

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☐ Convicted and sentenced state prisoner
- ☒ Convicted and sentenced federal prisoner
- ☐ Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

N/A

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

Incident was initiated due to code 4 called on 6/14/2018
at 1931 hours for Lower F-unit, North wing, shower area.

C. What date and approximate time did the events giving rise to your claim(s) occur?

On 6/14/2018 at around 1931 hours.

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

I was attacked by another prisoner stabbed and cut with a weapon, inmate Sochua Carter was able to wait outside shower until I came out due to staff letting one group of inmates out while I was in the shower. Staff not checking the block before opening doors. Names of witnesses already mentioned.

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

I received first aid only. was stabbed and cut on back. Messed my shoulder up during struggle, didn't go to outside medical but clearly had a head injury and think I should have went to outside medical.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

I want the courts to find that I was clearly harmed due to staff's failure to protect while here at Marion Correctional. That Marion has a broken form of system where staff are rarely punished but inmates are always charged where staff also errored. I want to sue for actual damages and/or punitive damages due to no one being punished or sanctioned within the staff ranks. I want to sue for about \$15,000.00 in each persons individual, official or within both capacity.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

- ☒ Yes
☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

I was housed at Marion Correctional

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

- ☒ Yes
☐ No
☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

- ☒ Yes
☐ No
☐ Do not know

If yes, which claim(s)?

The prison admitted to error in grievance response as to the fact of letting one group of inmates out before I was secured in my cell.

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

At Marion Correctional.

2. What did you claim in your grievance?

Failure to protect, letting another group of inmates out while I was still in the shower.

3. What was the result, if any?

They admitted too error.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

I appealed at every step until I couldn't appeal any more.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

N/A

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

N/A

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

I already showed courts my exhaustion there of.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

N/A

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☒ Yes
☐ No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s) SAFAN E. MCCLELLAN
 Defendant(s) N.C. DEPARTMENT OF PUBLIC SAFETY

2. Court (if federal court, name the district; if state court, name the county and State)

NORTH CAROLINA INDUSTRIAL COMMISSION

3. Docket or index number

I.C. # 1A-27386

4. Name of Judge assigned to your case

Senior Deputy Commissioner, Robert S. Harris

5. Approximate date of filing lawsuit

11/30/2018

6. Is the case still pending?

☐ Yes
☒ No

If no, give the approximate date of disposition. 2/3/2020

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

Judgment entered in My Favor! - Appealed for reasons concerning awarded Funds placement.

C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

Yes.

☒ Yes

☐ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s)

Defendant(s)

Jaion E. McClellan

N.C. Department of Public Safety

2. Court (if federal court, name the district; if state court, name the county and State)

N.C. Industrial Commission

3. Docket or index number

J.C. # 1A-28689

4. Name of Judge assigned to your case

Marshall L. Wright

5. Approximate date of filing lawsuit

7/1/2020

6. Is the case still pending?

☒ Yes

☐ No

If no, give the approximate date of disposition

N/A

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

N/A

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 4/11/2021

Signature of Plaintiff

Jaian E. McClellan

Printed Name of Plaintiff

Jaian E. McClellan

Prison Identification #

OPUS # 0512345

Prison Address

355 Old Glenwood Road

Marion
City

N.C.
State

28752
Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address